

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**UNITED STATES OF AMERICA**

v.

**ROBERT LABRON JOHNSON**

§  
§  
§  
§

**1:04CR74LG-JMR**

**ORDER GRANTING LEAVE TO AMEND 28 U.S.C. § 2255 MOTION**

BEFORE THE COURT is a Motion for Order Correcting Sentence and for Sentence Modification filed October 17, 2006. The Court notes *sua sponte*, that the Defendant's claim appears to challenge the validity of his conviction and sentence. Accordingly, such claims should be properly presented in a Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255. Further, the Court notes that, pursuant to Rule 2(b) of the RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS:

The motion shall be in substantially the form annexed to these rules... Blank motions in the prescribed form shall be made available without charge by the clerk of the district court to applicants upon their request. It shall specify all the grounds for relief which are available to the movant and of which he has or, by the exercise of reasonable diligence, should have knowledge and shall set forth in summary form the facts supporting each of the grounds thus specified. It shall also state the relief requested. The motion shall be typewritten or legibly handwritten and shall be signed under penalty of perjury by the petitioner.

Defendant's Motion does not conform to the requirements of Rule 2(b) in that:

- a) it is not in substantially the form annexed to the rules;
- b) it does not specify grounds for relief or the relief requested;
- c) it does not set forth facts supporting grounds purportedly specified in the Motion.

Thus, the Court is of the opinion that Defendant should be allowed to file an amended Motion in this cause, in the form and manner prescribed by the RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS. Accordingly,

**IT IS ORDERED AND ADJUDGED**, that Defendant shall file an amended Motion in the form and manner prescribed by the RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS **within thirty (30) days** of the date of this Order. Failure by Defendant to timely file the amended Motion will be interpreted by the Court as a failure to prosecute and may result in a recommendation that Defendant's Motion be summarily dismissed.

**IT IS FURTHER ORDERED AND ADJUDGED**, that the Clerk of Court is directed to furnish Defendant with the appropriate forms for filing a Motion pursuant to 28 U.S.C. § 2255.

**SO ORDERED AND ADJUDGED**, this the 17<sup>th</sup> day of October, 2006.

*St Louis Guirola, Jr.*  
LOUIS GUIROLA, JR.  
UNITED STATE DISTRICT JUDGE